



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 10, 2017
MAHS Docket No.: 17-010301
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on September 13, 2017, from [REDACTED], Michigan. Petitioner was represented by his sister, [REDACTED]. Petitioner and [REDACTED] personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 279 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner filed an application for SDA benefits alleging disability. [Dept. Exh. 1].
2. On [REDACTED], the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 2-7].
3. On [REDACTED], the Department issued Petitioner a Benefit Notice informing him that his application for SDA had been denied. [Dept. Exh. 8-9].

4. On [REDACTED], Petitioner filed a request for a hearing to contest the Department's negative action. [Dept. Exh. 1].
5. On [REDACTED], Petitioner present to the inpatient mental health unit on a voluntary basis. He had been drinking alcohol on a daily basis and required detoxification. He had a long history of alcohol abuse and was addressing symptoms of depression with suicidal ideation. Petitioner was discharged on [REDACTED], in stable condition. His prognosis was fair, depending on his adherence to treatment. [Dept. Exh. 62-63].
6. On [REDACTED], Petitioner presented to the hospital with concerns of safety. He was admitted to the psychiatric unit for mood instability and depression. It was noted that Petitioner had been to the hospital repeatedly usually claiming family conflicts, but it had been difficult to ascertain to what extent he had been involved in outpatient treatment or whether he set outpatient treatment as a priority. He was discharged in an improved condition and was not suicidal. His prognosis was guarded due to elevated risk factors that could lead to an adverse clinical outcome, but he no longer required the level of care there, however he may require acute inpatient care at a later time. [Dept. Exh. 53-54].
7. On [REDACTED], Petitioner was admitted to the psychiatric ward at [REDACTED] for mood instability. He admitted depression and suicidal thoughts. It was noted that Petitioner had been admitted recently. This hospitalization was relatively brief because he had a recent 8-10 hospital stay and other episodes of treatment in the past year. He was discharged on [REDACTED], as improved and not suicidal. His prognosis was guarded because he had elevated risk factors that could lead to an adverse clinical outcome, but he no longer required the level of care there, however he may require acute inpatient care at a later time. [Dept. Exh. 44-45].
8. On [REDACTED], Petitioner was admitted to the psychiatric ward of [REDACTED] for depression and suicidal thought. He presented with severe depression, chronic depression and homelessness. He was started on [REDACTED] and [REDACTED]. The [REDACTED] was changed to [REDACTED] and he did well on both medications. Petitioner was discharged on [REDACTED], as improved and his prognosis was fair. [Dept. Exh. 35-36].
9. On [REDACTED], Petitioner was admitted for a psychiatric evaluation at the [REDACTED] in [REDACTED], [REDACTED]. Petitioner was admitted for increasing depression, constant suicidal ideation and hopelessness. He was drinking heavily. It was noted that this was one of several psychiatric hospitalizations over the last two years. Petitioner was somewhat disheveled and withdrawn. He was restless with a constricted affect. He was anxious and depressed. His speech was loud. Petitioner's thought process was tangential and he was depressed and hopeless. His judgment was poor given his impulsivity and his capacity for activities of daily living was diminished. Petitioner

was diagnosed with major depression, recurrent not psychotic. Rule out bipolar 2, mixed, not psychotic. Alcohol use, moderate to severe. Treatment plan was to assess and stabilize Petitioner with regard to his over affective symptoms, impulses and establish safety. He was admitted to the adult psychiatric service, treatment modalities, suicide precautions, behavioral observation, use of psychotropic medications with changes planned. [Dept. Exh. 32-34].

10. On [REDACTED], Petitioner underwent a service entry initial assessment with the [REDACTED]. Petitioner was diagnosed with alcohol and cannabis dependences with a tertiary diagnosis of adjustment disorder with depressed mood. It was also noted that Petitioner had recently had two inpatient rehabilitation/psychiatric facility stays in North Carolina. [Dept. Exh. 26-30].
11. Petitioner is a [REDACTED]-year-old male, born on [REDACTED]. He is [REDACTED]" tall, and weighs [REDACTED] lbs. He has a high school education and last worked in [REDACTED].
12. Petitioner alleges disability on the basis of Depression, Anxiety, Bipolar disorder, suicidal ideations, manic-depression, personality disorder, and impairment of the use of his right arm.
13. Petitioner's impairments have lasted, or are expected to last, continuously for a period of [REDACTED] months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

. . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as ultrasounds, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Based on a review of the medical evidence, Impairment Listing 12.04(c) was evaluated.

- C. 12.04 C provides, "Your mental disorder in this listing category is "serious and persistent;" that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

Based on Petitioner's credible testimony and Petitioner's voluminous psychiatric hospitalization history over the past two years, Petitioner meets Listing 12.04C and is disabled. Had Petitioner not met a listing, the analysis would have continued to the fourth step.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f). Petitioner has not worked since [REDACTED]. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

The medical information indicates that Petitioner suffers from Depression, Anxiety, Bipolar disorder, suicidal ideations, manic-depression, personality disorder and impairment of the use of his right arm. Petitioner's credible testimony was supported by his medical records.

Petitioner is [REDACTED] years old with a high school education. Petitioner's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as

disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Petitioner has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

DECISION AND ORDER

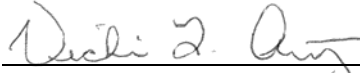
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's [REDACTED], SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in [REDACTED], unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/bb



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]